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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,532	11/26/2003	Fabian Montero	MONT-00600	8661
28960	7590	10/14/2005	EXAMINER	
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			LINDSEY, RODNEY M	
		ART UNIT	PAPER NUMBER	
		3765		
DATE MAILED: 10/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/723,532	MONTERO, FABIAN	
	Examiner Rodney M. Lindsey	Art Unit 3765	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 15 September 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-15 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 26 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/25/05.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The structural details of the adjusting means that permit the windshield position to be adjusted are not understood. The structural details of the manual override switch are not understood. The structural details of the position detection circuit are not understood.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-12, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Canadian patent to Fisk. With respect to claims 1, 7 and 14 note the provided helmet 12, windshield 14 and operating mechanisms as at 16, 18 equivalent to the means for automatically adjusting a position of the windshield as claimed. Inherently the operating mechanism of Fisk would function relative to the speed of a vehicle as it is capable of responding to a transmitted

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signal. With respect to claims 2, 3, 8 and 9 the specifics of the predetermined threshold value do not set forth any structure of the adjusting means not taught by the adjusting means of Fisk.

With respect to claim 4 note the control circuit at 74 for receiving and performing a Boolean operation with regards signals from a transmitter 116. With respect to claim 5 note power supply 122. With respect to claim 6 note the manual override switch 96. With respect to claim 10 note the receiver 74 equivalent to a control circuit as claimed and the electrical connection between the receiver 74 and motor 96 equivalent to the receiver and filter circuit as claimed, with 74 receiving signals from a device on a motorcycle and performing a Boolean operation to activate the motor 96 to adjust the windshield as claimed. With respect to claim 11 the source of the signals is not seen to set forth any structure of the control system not found in the control system of Fisk. With respect to claim 12 note the manual override switch "switch 96". With respect to claim 15 note the receiver 74 receiving signals from a device on a motorcycle and generating electrical signals to perform a Boolean operation to activate a motor 96 to adjust the position of a windshield as claimed.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Canadian patent to Fisk in view of Acquaviva. Fisk does not teach the position detection circuit. Acquaviva teaches a position detection circuit 70, 71 for sending a detection signal to a control circuit for

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motor 21M (see column 7, lines 12-32). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the system of Fisk with the position detection circuit 70, 71 of Acquaviva to achieve the advantage of establishing a threshold value for operation of the motor.

*Response to Arguments*

7. Applicant's arguments filed September 15, 2005 have been fully considered but they are not persuasive. Contrary to applicant's remarks the instant specification fails to teach that structure necessary to implement the functions required of the instant invention. To claim an invention in terms of what it does is proper. However, the specification must support such a claim by describing at least one embodiment detailing structure capable of effecting such functions. Applicant's specification does not teach any specific arrangement of circuits, motors, switches, levers, gears, etc. necessary to form at least one embodiment of the invention. With respect to the manual override switch at least one construction of such a switch incorporated in the helmet and operative with the other elements of the helmet should be shown. In other words when the manual override switch is operated how are the other elements of the helmet, and specifically the control circuit, affected? In regards to the position detection circuit how is the windshield position determined by such circuit? Contrary to applicant's remarks drawn to Fisk, any windshield adjusting apparatus capable of receiving a signal from some source, including a moving vehicle or manually operated switch, would in fact be possessive of means for automatically adjusting a position of the windshield as broadly claimed. That Fisk discloses the source of the received signal as being a manually operated switch does not negate Fisk's teaching of having automatic means for adjusting the windshield, the instant claims merely

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requiring such means and in no way precluding the presence of the manually operated switch.

The rejection of claims 1-15 ably set forth above is deemed proper in all respects.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

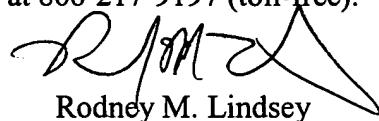
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

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